

REMARKS

The Office Action dated April 27, 2007 has been reviewed, and the comments of the U.S. Patent Office have been considered. Claims 1-27 are canceled. Newly added claims 28 to 46 are presented for the Examiner's review for consideration.

Claims 1-2, 4, 6-7, 9 and 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,784,768 (hereinafter referred to as Mathieu). The Examiner's argument is that it would have been obvious to modify Mathieu by moving a tubular connecting piece from a position on a connecting opening 3 so that it directly connects a distributing chamber 8 because "it has been held that rearranging parts of an invention involves only routine skill in the art."

Applicants respectfully propose that the Examiner has not made out a prima facie case of obviousness since "Use of per se rules by Office personnel is improper for determining whether claimed subject matter would have been obvious under 35 U.S.C. 103" MPEP 2411.089.

Applicants traverse the rejection. Claim 28 (and similarly for claim 39) requires a blood port and a secondary port such that "a blood port connected to the first opening and a secondary port connected to the second opening such that the blood port and the secondary port are not connected except through the headspace." Applicants note that many fluid circuits used in medical procedures often contain branching lines. Mathieu shows such a common structure, namely, a filter with a line 3 and a branching line 12 extending from the line 3. The device of Mathieu thus shows the connection of two staple elements, a filter and a branching line. The instant application shows and claims an end cap with two openings. The Examiner still has the burden to show why this is obvious. In re Japikse is distinguishable. The holding in In re Japikse is based on the fact that "shifting the position of the starting switch would not have modified the operation of the device." The location of the switch was found to be immaterial. The proposed modification of Mathieu produces a result with significantly different properties. In the alternative, the Examiner has not shown why a person of ordinary skill would have had a reason to modify the device of Mathieu.

CONCLUSION

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact the undersigned to expedite prosecution of the application.

The Commissioner is hereby authorized by this paper to charge any fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-3840. **This paragraph is intended to be a CONSTRUCTIVE PETITION FOR EXTENSION OF TIME in accordance with 37 C.F.R. § 1.136(a)(3).**

Respectfully submitted,



Mark A. Catan
Attorney for Applicant
Reg. No.: 38,720

Date: _____
Patent Administrator
Proskauer Rose LLP
1001 Pennsylvania Avenue, NW
Suite 400
Washington, DC 20004
Telephone: 202.416.6800
Facsimile: 202.416.6899

Customer No. 61263